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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW TYE,

Defendant and Appellant.

G054967

(Super. Ct. No. 10HF2304)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Judge. Appeal dismissed as moot.

Matthew Tye, in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Paige B. Hazard, Deputy Attorneys General, for Plaintiff and Respondent.

In this, defendant Matthew Tye's sixth appeal in this matter, he challenges the denial of his motions seeking to have a number of probation conditions stricken or modified. He also complains the superior court improperly refused to permit him to call witnesses in support of his motions below, and he objects to the manner in which the probation department filed responses to his motions. We will dismiss the appeal as moot because defendant's probation has terminated and the issues he raises while capable of repetition are not likely to evade review.

FACTS

In 2013, defendant plead guilty to eight felony sex offenses and was placed on probation. In March, 2017, defendant filed a motion to strike the probation condition that he "[o]bey all orders, rules, regulations, and directives of the Court, Probation Department, Mandatory Supervision, and Jail" (Obey Condition); a motion to modify the probation condition that he "not be in the presence of children under the age of 18, unless accompanied by a responsible adult 21 years of age or older and approved in advance by [his] probation or mandatory supervision officer" (Presence Condition); and a request for declaratory relief concerning his search and seizure probation condition (Search Condition). These matters were heard and denied by the superior court on March 23, 2017.

Defendant wanted to present the testimony of his probation officer at the hearing on his motions, but the superior court judge conducting the hearings ruled live testimony was not required. The court informed defendant there was no need for testimony in connection with his constitutional challenge to the Presence Condition being overbroad and vague, and denied the motion to modify it. Defendant's offer of proof as to the expected testimony of the probation officer in connection with the Obey Condition was that he wanted to ask the probation officer about "using that particular condition to impose [the probation officer's] own conditions." The court denied the motion to strike the Obey Condition without hearing testimony.

Defendant asked the superior court for declaratory relief regarding the Search Condition, stating the probation officer is not to enter his girlfriend/roommate's locked room absent "articulable facts showing that there is a person in the room that constitutes a danger to officer safety, citing *Maryland v. Buie* (1990) 494 U.S. 325, and *People v. Sanders* (2000) 84 Cal.App.4th 1211, a case superseded by a grant of review and the California Supreme Court's subsequent decision therein, *People v. Sanders* (2003) 31 Cal.4th 318. The court held there was no need to modify the Search Condition to expressly require compliance with *Buie* and *Sanders*.

DISCUSSION

Defendant's probation terminated on December 12, 2018.¹ In view of this fact, we ordered supplemental briefing to determine whether the issues raised on appeal are moot. We have read and considered the supplemental briefs, and conclude the issues raised by defendant are moot.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.]" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) "[A]s a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition. . . ." [Citation.]" (*Id.* at p. 1490.) As a general rule, the termination of a defendant's probationary period renders an appeal challenging probation conditions moot. (*People v. Cabajal* (1995) 10 Cal.4th 1114, 1120, fn. 5.)

¹ We obtained a copy of a superior court minute order in this case dated January 15, 2019, which provided in part: "Having no response by the People and the matter submitted, the defendant's motion to terminate probation as of 12/12/18 is GRANTED. [¶] Court orders probation terminated as to count(s) 1, 2, 3, 4, 5, 6, 7, 8." After giving notice to the parties and providing them with an opportunity to object, we took judicial notice of this minute order on our own motion. (Evid. Code §§ 452, subd. (d) & 459, subd. (a); *People v. White* (2014) 223 Cal.App.4th 512, 519, fn. 4.)

Because defendant is no longer on probation, this appeal challenging his probation conditions and the manner in which the hearing on his motions was conducted cannot benefit him to any degree. Therefore, this appeal is moot.

Defendant asks us to decide these issues notwithstanding their mootness. We decline the invitation because the issues raised herein are not “‘capable of repetition yet likely to evade review.’ [Citation.]” (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 654.)

Defendant contends the superior court’s refusal to permit him to present witnesses on his motions challenging the probation conditions is not moot. But it is. Since defendant’s probationary period has expired, a reversal of the superior court’s order based on the refusal to permit testimony would confer no benefit upon defendant. His probationary period would still be terminated, and the superior court would be without jurisdiction to rehear the motion regarding the probationary conditions for a probation that no longer exists. The same is true of defendant’s complaint about the way the probation department responded to his motions.

DISPOSITION

The appeal is dismissed as moot.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.